



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2022-0981; FRL-10417-01-OECA]

Public Comment on EPA’s National Enforcement and Compliance Initiatives for Fiscal Years 2024-2027

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is soliciting public comment and recommendations on the National Enforcement and Compliance Initiatives (NECIs) for fiscal years 2024-2027 (formerly called “National Compliance Initiatives”). The EPA focuses enforcement and compliance resources on the most serious and widespread environmental problems by developing and implementing national program initiatives. The initiatives currently underway, modifications to these existing initiatives, as well as potential new initiatives under consideration are described in the SUPPLEMENTARY INFORMATION section of this document, with additional descriptions and data on the current initiatives available on our website: <http://www.epa.gov/enforcement/national-compliance-initiatives>.

DATES: Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may send comments, identified by Docket ID No. EPA-HQ-OECA-2022-0981 by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov/> (our preferred method).
Follow the online instructions for submitting comments.
- Mail: U.S. Environmental Protection Agency, EPA Docket Center, OECA, Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- Hand Delivery or Courier: EPA Docket Center, WJC West Building, Room 3334, 1301

Constitution Avenue, NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m. – 4:30 p.m., Monday – Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Michele McKeever, Chief, National Planning and Measures Branch, Office of Enforcement and Compliance Assurance, Mail Code: M2221A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: 202-564-3688; fax number: 202-564-0027; email address: mckeever.michele@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” refer to the EPA.

Table of Contents

- I. Written Comments
- II. What Are EPA's National Enforcement and Compliance Initiatives?
- III. On What Is the EPA Requesting Comment?
- IV. What Are the Current FY 2020-2023 National Compliance Initiatives?
- V. What Are the Potential Initiatives Under Consideration for FY 2024-2027?
 - A. Existing Initiatives
 - B. Proposed NEICs
 - C. Public Comments
- VI. Can the Deadline for Comments Be Extended?

I. Written Comments.

Submit your comments, identified by Docket ID No. EPA-HQ-OECA-2022-0981, at <https://www.regulations.gov> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's

docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). Please visit <https://www.epa.gov/dockets/commenting-epa-dockets> for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

II. What Are EPA's National Enforcement and Compliance Initiatives?

EPA selects national initiatives every four years to focus resources on serious and widespread environmental problems where federal enforcement can make a difference. The primary objective of these initiatives is to protect human health and the environment by holding polluters accountable and compelling regulated entities to return to compliance. While formal enforcement remains the key tool to address serious environmental problems and significant violations, as well as create general deterrence, EPA also uses a variety of compliance assurance tools to achieve this objective. To reflect this comprehensive approach, EPA has changed the name from National Compliance Initiatives to National Enforcement and Compliance Initiatives (NECIs).

In selecting initiatives for the FY 2024-2027 cycle, EPA will use the following three criteria to evaluate the existing and proposed new initiatives: 1) the need to address serious and widespread environmental issues and significant violations impacting human health and the environment, particularly in overburdened and vulnerable communities; 2) areas where federal enforcement can help ensure national consistency, promote a level playing field, and achieve compliance; and 3) alignment with the Agency's Strategic Plan.

EPA aims to align all existing and proposed NECIIs with two overarching Strategic Plan goals: Goal 1: Tackle the Climate Crisis and Goal 2: Take Decisive Action to Advance Environmental Justice. Specifically, EPA has incorporated climate resiliency considerations where appropriate in the current initiatives, and as discussed below, we are proposing a new NECI that would focus specifically on mitigating climate change by reducing non-compliance with applicable requirements, such as the Clean Air Act and American Innovation and Manufacturing Act. Promoting environmental justice, on the other hand, is not specific to any one program or statute; it is a core principle of all of our enforcement and compliance work. Therefore, rather than proposing a separate Environmental Justice NECI, we have fully incorporated environmental justice considerations into every existing and proposed NECI as we seek to reduce environmental harm in vulnerable and overburdened communities.

III. On What Is the EPA Requesting Comment?

The EPA's Office of Enforcement and Compliance Assurance is soliciting public comment and recommendations on the NECIIs to be undertaken by EPA over the four-year period of fiscal years 2024-2027. Specifically, EPA is collecting comment on which of the current national initiatives should continue into the FY 2024-2027 cycle, as is or modified, or be returned to the standard or "core" enforcement program at the end of FY 2023. Initiatives returned to the core program will continue to be addressed by enforcement and compliance assurance measures as appropriate. In addition, the EPA specifically invites comment on two potential new NECIIs and two other areas under consideration for further evaluation as potential NECIIs. The public also is invited to propose other areas for consideration as a NECI. This notice is an agency planning document and does not impose any legally binding requirements on any outside parties.

IV. What Are the Current FY 2020-2023 National Compliance Initiatives?

EPA has six initiatives underway from the FY 2020-2023 cycle. These initiatives are:

Creating Cleaner Air for Communities by Reducing Excess Emissions of Harmful

Pollutants. This initiative, started in FY 2020, addresses the adverse health and environmental effects from exceedances of the National Ambient Air Quality Standards (NAAQS) for ozone to which sources of volatile organic compounds (VOCs) contribute, as well as health impacts on communities from emissions of hazardous air pollutants (HAPs). People living in non-attainment areas or in communities that are near sources of HAPs may face significant risks to their health and environment. Sources emitting VOCs may contribute to non-attainment or may adversely affect the attainment status of an area. VOCs are a key component in the formation of ground-level ozone (a constituent of photochemical smog) and secondary organic aerosols, both of which may impact ecosystems and can cause adverse health effects. HAPs are pollutants that are known or suspected to cause cancer or other serious health effects.

Stopping Aftermarket Defeat Devices for Vehicles and Engines. This initiative, begun in FY 2020, focuses on stopping the manufacture, sale, and installation of defeat devices on vehicles and engines used on public roads as well as on nonroad vehicles and engines. Numerous companies manufacture and sell hardware and software specifically designed to defeat required emissions controls on vehicles and engines. Illegally-modified vehicles and engines contribute substantial excess pollution that harms public health and impedes efforts to attain air quality standards. EPA estimates that emissions increase significantly when emissions controls are fully deleted. For example, if the emissions controls are deleted from a diesel truck, NO_x increases by ~310%, NMHC increases by ~1,140%, CO increases by ~120% and PM increases by ~40%.

Reducing Hazardous Air Emissions from Hazardous Waste Facilities. The Agency began this initiative in 2017 with the goal of ensuring that treatment, storage, and disposal facilities and large quantity generators, many of which are in vulnerable or overburdened communities, comply with Resource Conservation and Recovery Act requirements to control organic air emissions. Widespread air emissions are associated with the improper management of hazardous waste. These emissions can include constituents known or suspected to cause cancer, birth

defects, or that seriously impact the environment. In addition, leaks from these facilities can contribute to nonattainment with the NAAQS for ozone.

Reducing Risks of Accidental Releases at Industrial and Chemical Facilities. This initiative, which began in 2016, seeks to decrease the likelihood of chemical accidents and ensure that thousands of facilities nationwide, many of which are in vulnerable or overburdened communities, comply with section 112(r) of the CAA and the Chemical Accident Prevention regulations, also known as the Risk Management Program. EPA regulates facilities that manufacture, use, store, or otherwise handle a listed chemical in a process at or above an established threshold quantity. A broader statutory obligation under CAA section 112(r)(1), the General Duty Clause (GDC), applies to all stationary sources with regulated substances or other extremely hazardous substances, regardless of the quantity of chemical involved. Catastrophic accidents at these facilities—historically about 150 each year—can result in fatalities and serious injuries, evacuations, and harm to human health and the environment.

Reducing Significant Non-Compliance in the National Pollutant Discharge Elimination System (NPDES) Program. This initiative, which began in FY 2020, undertaken in collaboration with the NPDES states, seeks to reduce the number of facilities in significant non-compliance (SNC) with their NPDES permits. Compliance with NPDES permits is critical to protecting our nation's waters. Improving surface water quality protects public health and reduces potential pollution impacts on drinking water supplies, aquatic life and public enjoyment of fishable and swimmable waters. SNC-level violations can include effluent limit exceedances, failure to submit required monitoring reports, and failure to meet schedule requirements. These SNC-level effluent violations pose a significant threat to public health and the environment, resulting in higher and more harmful concentrations of bacteria, disease-causing pathogens, and high amounts of other pollutants, such as sediment, oil and grease, chemicals, nutrients, and metals.

Reducing Non-Compliance with Drinking Water Standards at Community Water Systems. This initiative, which began in FY 2020, seeks to ensure that the approximately 50,000

regulated drinking water systems that serve water to residents year-round, referred to as Community Water Systems (CWSs), comply with the Safe Drinking Water Act. In FY 2018, 40% of the nation's CWSs violated at least one drinking water standard. In addition, there were monitoring and reporting violations at more than 30% of CWSs, and health-based violations at 7% of CWSs. The EPA works with states, tribes, territories, local governments, and the regulated community to ensure delivery of safe water to communities by carrying out shared responsibilities and creating a more effective drinking water enforcement program nationally.

Additional information on these initiatives is available online at:

<http://www.epa.gov/enforcement/national-compliance-initiatives>.

V. What Are the Potential Initiatives Under Consideration for FY 2024-2027?

A. Existing Initiatives

For the six current initiatives from the FY 2020-2023 cycle, EPA is soliciting input on whether we should continue, modify, or conclude the initiative and return it to the “core” or standard enforcement program. As noted above, initiatives returned to the core enforcement program will continue to be addressed by the Agency even though they are no longer national initiatives. The EPA is planning to continue the following four existing initiatives into the FY 2024-2027 cycle:

1. Creating Cleaner Air for Communities by Reducing Excess Emissions of Harmful Pollutants. The EPA plans to continue this initiative for the FY 2024-2027 cycle, with a focus on processes for which widespread noncompliance continues to be identified: flares, storage tanks, wastewater treatment, and incineration/combustion. In addition, continuing this initiative can further the EPA Strategic Plan goals of advancing environmental justice and addressing climate change by prioritizing inspections at sources impacting vulnerable or pollution-burdened communities and by achieving pollutant reductions with the co-benefit of reducing emissions of methane which contributes to climate

change. For example, FY 2021 enforcement actions resulted in a reduction of approximately 6.7 million pounds of VOCs and HAPs and over 15.7 million pounds of methane reduced.

2. Reducing Risks of Accidental Releases at Industrial and Chemical Facilities.

The EPA plans to continue this initiative for the FY 2024-2027 cycle because EPA has found that many regulated facilities still are not adequately managing the risks they pose or ensuring the safety of their facilities to protect surrounding communities. The EPA plans to continue this initiative with a focus on enforcement responses to catastrophic accidents and integrating the Strategic Plan goals of advancing environmental justice and addressing climate change by increasing inspections in vulnerable and overburdened areas, such as fenceline communities, and considering vulnerability of facilities to natural hazards and climate change as criteria when selecting facilities for inspection. In addition, the GDC requirements cannot be delegated to states, tribes, or territories, and while RMP regulations may be delegated, EPA remains the sole enforcement authority in all but nine states.

3. Reducing Significant Non-Compliance in the National Pollutant Discharge

Elimination System (NPDES) Program. EPA plans to continue this initiative for the FY 2024-2027 cycle, with a focus on assuring the worst effluent violators are addressed and on reducing the effluent violation component of the SNC rate (during the FY 2020-2023 cycle of this initiative, EPA and the states together cut the national SNC rate in half, to 9.0%, focused on reducing missing data and improving data quality; however, a large number of facilities continue to have effluent violations). While focusing on addressing the worst effluent SNC violators, the initiative would be expanded to include municipal permittees that are covered under a general permit, as unlawful discharges

from facilities with a general permit can cause significant adverse impacts to communities, particularly overburdened communities. Approximately 30% of facilities with SNC-level effluent violations are located in communities with potential environmental justice concerns. In addition, this initiative proposes to seek remedies in enforcement actions to advance climate resiliency, where appropriate. Therefore, this initiative can further the Strategic Plan goals of advancing environmental justice and addressing climate change. There are approximately 46,000 major and minor individually NPDES-permitted facilities in the country. Providing coordinated, national leadership under a national initiative enables EPA and the states to work together to achieve progress on reducing SNC-level effluent violations.

4. Reducing Non-Compliance with Drinking Water Standards at Community Water Systems. EPA plans to continue this initiative for the FY 2024-2027 cycle because while EPA, working with the states, has made considerable progress in improving Safe Drinking Water Act (SDWA) compliance, further improvement in compliance is needed. In FY 2022, EPA conducted 140 inspections at community water systems serving more than 3 million users. Enforcement actions by EPA and states, territories, and tribes with primacy that reduced the risks of potential drinking water violations for 900,000 people. In the last year, however, nearly 22.5 million people still consumed water provided by a CWS with at least one health-based violation. The most common health-based violations are violations of the Lead and Copper Rule, the Disinfection Byproducts Rule, and the Ground Water Rule. Therefore, the EPA plans to continue this initiative with a focus on these rules. In addition, this initiative can further the EPA Strategic Plan goals of advancing environmental justice and addressing climate change. Specifically,

opportunities to advance environmental justice are extensive as overburdened communities, including those in Indian country, often face SDWA compliance challenges. This initiative would seek to increase the number of inspections at systems serving overburdened communities and ensuring that communities know about health-based violations and steps to take to protect their health. In addition, the initiative would consider climate change resiliency by ensuring compliance with SDWA section 1433, which requires CWSs serving more than 3,300 people to develop risk and resilience assessments and emergency response plans which must include the risks posed by climate change and natural hazards on the infrastructure of the system.

The EPA proposes to return the following two current initiatives to the standard “core” enforcement program:

1. Reducing Toxic Air Emissions from Hazardous Waste Facilities. This initiative succeeded in significantly raising the visibility and awareness of the RCRA organic air emissions standards among both regulators and the regulated community. The Agency began this initiative in 2017, and has concluded 362 addressing actions, including 101 enforcement cases, and has prevented the release of over 120 million pounds of total air pollutants to the environment. Almost all of these pollutant reductions were from facilities located in overburdened communities, providing a direct environmental benefit to nearby populations. In addition to taking enforcement actions against hazardous waste Treatment, Storage, and Disposal Facilities (TSDFs) and Large Quantity Generators to compel compliance, EPA also worked with states and industry to provide training with the goal of improving compliance going forward. EPA will continue efforts to build state capacity in this program. Accordingly, the Agency proposes to return work in this area to the

core program at the end of FY 2023.

2. Stopping Aftermarket Defeat Devices for Vehicles and Engines. Since the inception of the NCI in FY 2020, EPA has resolved approximately 130 cases, addressing over 460,000 violations. In FY 2022 alone, EPA concluded 41 cases with over \$19 million in civil penalties. The Agency has made significant progress on this initiative, addressed serious violations through enforcement actions reducing pollution and improving air quality, and raised awareness of the concerns. Accordingly, the Agency proposes to return work in this area to the core program in at the end of FY 2023.

B. New NECIs

The EPA specifically invites comment on two potential new NECIs and two other areas under consideration for further evaluation as potential NECIs. As noted above, we have developed the proposed NECIs in alignment with the EPA Strategic Plan's emphasis on tackling the climate crisis and promoting environmental justice. We therefore are proposing a new NECI focused on climate change mitigation, while seeking opportunities to enhance climate resiliency in other NECIs, where appropriate. Promoting environmental justice, on the other hand, is a core element of all enforcement and compliance work and we are incorporating those considerations in every NECI – existing ones that we propose to retain as well as proposed new initiatives – as we seek to reduce public health impacts and environmental harm in vulnerable and overburdened communities.

The two potential new NECIs are described as follows:

1. Mitigating Climate Change. A potential climate NECI would seek to combat climate change through a focus on reducing non-compliance with the illegal import, production, use, and sale of hydrofluorocarbons (HFCs) pursuant to the American Innovation and Manufacturing Act of 2020 (AIM Act); excess emissions from sources within certain industrial sectors, including municipal

solid waste landfills and oil and natural gas production facilities; as well as non-compliance with other requirements such as mobile source, fuels, and methane regulations. Climate change poses substantial risk to public health and safety, water resources, agriculture, infrastructure, and ecosystems.

Addressing climate change using EPA's available compliance and enforcement tools is critical to EPA's mission of protecting human health and the environment, particularly protecting populations that may be especially vulnerable to the effects of climate change, including those in overburdened, underserved, and economically distressed communities. Although EPA has sought to incorporate climate considerations in the current initiatives, with a particular focus on climate resiliency, this NECI would focus on achieving the Agency's climate mitigation goals in order to reduce climate disruption and the increases in global temperatures that are likely to occur without enforcement of the Agency's climate mitigation regulations.

2. Addressing PFAS Contamination. A potential PFAS NECI would focus on implementing the commitments to action made in EPA's 2021-2024 Per- and Poly-fluoroalkyl substances (PFAS) Strategic Roadmap (https://www.epa.gov/system/files/documents/2021-10/pfas-roadmap_final-508.pdf). In the Roadmap, EPA committed to holding polluters and other responsible parties accountable for their actions, ensuring that they assume responsibility for characterization and remediation efforts and prevent future releases of PFAS. Many communities and ecosystems are exposed to PFAS in drinking water, surface water, groundwater, soils, sediment, air, and through product exposures. Exposure to PFAS can lead to adverse human health effects and has been identified as an urgent public health and environmental issue facing communities across the nation. Current peer-reviewed scientific studies have

shown that exposure to certain levels of PFAS may lead to reproductive effects such as decreased fertility, developmental effects or delays in children, and increased risk of some cancers, including prostate, kidney, and testicular cancers. A PFAS NECI initially would focus on identifying the extent of PFAS exposures that pose a threat to human health and the environment and pursuing responsible parties for those exposures. Where appropriate, EPA would work with its State partners on this initiative and seek to supplement PFAS enforcement work already performed by many State regulators. To the extent that PFAS cleanup efforts occur under CERCLA, EPA will develop a CERCLA enforcement discretion and contribution protection settlement policy regarding PFAS contamination. For example, EPA intends to focus enforcement efforts on PFAS manufacturers whose actions result in the release of significant amounts of PFAS into the environment, and on federal facilities that may be a significant source of PFAS contamination. EPA does not intend to pursue entities where equitable factors do not support assigning CERCLA responsibility.

The EPA also seeks comment on two additional areas for further consideration for possible development as NECIs. Both topics are significant enforcement priorities for the Agency but resource constraints limit the number of NECIs that the Agency can pursue:

1. Reducing Exposure to Lead. The EPA has existing efforts to tackle lead contamination in all environmental media. Exposure to lead is one of the country's most pressing environmental and human health concerns. Americans can be exposed to lead via lead-based paint, drinking water, soil, and air emissions. Ongoing exposures to lead in the environment present a health risk to many people nationwide, especially in communities overburdened by pollution, which are disproportionately communities of color

and low-income communities. Some of these exposures result from non-compliance with laws designed to reduce or eliminate exposure and enforcement can play a key role in addressing this non-compliance. EPA's Lead Strategy (<https://www.epa.gov/lead/final-strategy-reduce-lead-exposures-and-disparities-us-communities>, at Objective E) sets forth a comprehensive strategy to implement its wide range of authorities to address noncompliance, obtain cleanups, deter future violations, and mitigate harm using available resources. EPA seeks comment on whether, in addition to the existing Lead strategy, we should identify our lead enforcement commitments as a new NECI.

2. Addressing Coal Combustion Residuals (CCR). EPA has on-going efforts to address noncompliance with RCRA regulations for the safe disposal of CCRs, commonly known as coal ash, from coal-fired power plants. There are approximately 300 CCR facilities nationwide, comprised of 772 CCR units (239 CCR landfills and 533 CCR surface impoundments). However, these facilities are not evenly distributed throughout the country; approximately 45% are located in eight states (IA, IL, KY, MI, MO, NC, and TX). Most CCR impoundments and landfills are unlined, allowing metals and other contaminants to leach into groundwater. The impact or harm to human health and environment from CCR noncompliance is significant and can occur through direct exposure to impoundment wastewater or consumption of contaminated drinking water. EPA seeks comment on the idea of a CCR-focused NECI to reduce noncompliance in this sector.

C. Public Comments

The EPA will consider all comments to these proposals as it moves forward in the decision-making process. Additionally, the public is invited to propose any other areas for consideration as NECIs. Information in support of this Notice of Public Comment is available

online at: <http://www.epa.gov/enforcement/national-compliance-initiatives>.

VI. Can the Deadline for Comments Be Extended?

EPA must receive public comments on potential NECs by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** in order to complete consideration of public comment, issue a selection memo, and begin development of implementation strategies prior to the beginning of the FY 2023-2027 cycle.

Lawrence E. Starfield,

Acting Assistant Administrator,

Office of Enforcement and Compliance Assurance.

[FR Doc. 2023-00500 Filed: 1/11/2023 8:45 am; Publication Date: 1/12/2023]